

Wyoming State Bar Board of Officers & Commissioners Meeting

August 20, 2021

Best Western Devils Tower Inn

Hulett, Wyoming

- In Attendance:** Billie LM Addleman, President; J. Kenneth Barbe, President-Elect (via phone); R. Scott Kath, Vice President; Kelly M. Neville, Immediate Past President; Stefanie L. Boster, First Judicial District Commissioner; Sarah L. Chavez, Second Judicial District Commissioner; Teresa S. Thybo, Third Judicial District Commissioner; Jennifer L. Kirk, Fifth Judicial District Commissioner; Alison O. Gee, Sixth Judicial District Commissioner; P. Craig Silva, Seventh Judicial District Commissioner; Shawn G. Wilde, Eighth Judicial District Commissioner; James T. Whiting, Ninth Judicial District Commissioner; Benjamin R. Rose, Young Lawyer Section Chair; Sharon Wilkinson, Executive Director and Mark W. Gifford, Bar Counsel
- Absent:** James L. Edwards, Treasurer; Kevin K. Kessner; Fourth Judicial District Commissioner, and Cathy Duncil, Admission Director/Bookkeeper
- Guests:** Michael Golden—Chair, Review and Oversight Committee
Weston Graham—Past President, Wyoming State Bar
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President Billie LM Addleman called the meeting to order at 12:31 p.m. on Friday, August 20, 2021.

Approval of Agenda

Executive Director Sharon Wilkinson requested that four items be added to the agenda. Those items were:

1. Annual Member Benefit Review
2. Mark Gifford's Health Insurance Proposal
3. Matching Grant Request from the Equal Justice Wyoming Foundation
4. Annual Meeting

Vice President Scott Kath made a motion to approve the agenda as amended. Commissioner Alison Gee seconded the motion. The motion carried unanimously.

Approval of Minutes

Commissioner Gee made a motion to approve the April 23rd meeting minutes. Vice President Kath seconded the motion. The motion carried unanimously.

Executive Committee Meeting Minutes

President Addleman directed the Board's attention to the minutes of the Executive Committee conference calls and asked if anyone had any questions. There were none.

Treasurer's Report

In Treasurer Jim Edward's absence, Executive Director Wilkinson shared that we are 83% through the current fiscal year. She shared that we are at 111% of the budgeted income and have spent only 70% of the budgeted expenses. She provided an overview of the Profit & Loss Budget vs. Actual noting those line items that differed greatly than what was projected and provided an explanation for each.

After discussion, Commissioner James Whiting made a motion to accept the Treasurer's Report. Commissioner Teresa Thybo seconded the motion. The motion carried unanimously.

Admissions

In Cathy Duncil's absence, Mark Gifford reported that Ms. Duncil administered the July exam to 68 applicants. He shared that with a few exceptions, the administration went smoothly. He discussed the three "irregularities" that had to be reported to the National Conference of Bar Examiners (NCBE)—none of which were significant.

Mr. Gifford shared that he and Sharon Wilkinson traveled to Pinedale earlier in the week to meet with five members of the Board of Law Examiners (BLE), as that group was grading exams on Tuesday and Wednesday of this week. He reported that one distinguishing thing about this grading session is they had two hand-written exams that were illegible. Because Darin Scheer is also a member of the NCBE Board of Directors, he was able to use his resources there and have a member of NCBE's staff transcribe the exams so they could be graded.

Mark Gifford provided an overview of a proposed admissions rule change that the BLE agreed upon that would close a "donut hole" in the rule. He explained that currently, UBE score transfer applicants must transfer a score to another jurisdiction within three years of earning a passing score. Motion applicants are only eligible if they have practiced for at least five years in another jurisdiction. As a result of these requirements, Mr. Gifford shared that the BLE is seeing an increase in waiver requests from applicants whose scores are too old to transfer. He shared that Cathy Duncil had done research to learn what other states' requirements were. The BLE proposes a rule change to allow UBE score transfer applicants to apply even if they achieved a passing score on an exam taken more than three years ago, provided that they have at least two years of practice experience. They are awaiting word from the Supreme Court on the proposed change.

Mark Gifford shared that because this is a budget year, Sharon Wilkinson, Executive Secretary to the BLE, will go before the Joint Appropriations Committee in December to request spending authority on the money kept in the special revenue account. The account is the repository for fees paid by each applicant.

Mandatory Continuing Legal Education (CLE)

Sharon Wilkinson reported that there is nothing going on with mandatory CLE this time of year but reminded the Board that all active members must be compliant with their 2021 CLE by January 15, 2022.

Mark Gifford reminded the Board that due to last year's pandemic-related budget cuts, the Bar was able to step in and host a full-day CLE program for the Public Defender's Office, which was provided free of charge. He shared that the Bar is doing the same thing for all of the prosecutors in the state. This will be a two-day program slated for November.

Attorney Discipline

Mark Gifford shared that his office is back on track with the number of attorney complaints it has received this year after having an unusually slow year last year. He reported that there are currently two matters in formal charge. A third matter he thought would be in formal charge is being handled by a diversion instead. Mr. Gifford provided an overview of the sad circumstances involved in the diversion case.

Mr. Gifford also reported that the Supreme Court currently has a stipulated public censure that he expects to see shortly. He reported that the report and recommendation for Becket Hinckley's disbarment is currently at the Court; however, he thinks the Court is writing an opinion about this particular disciplinary case, which is rare. Mr. Gifford shared that he has encouraged the Court for quite some time to write opinions in these cases in order to develop a body of professional responsibility case law.

Mark Gifford shared that his assistant, Shannon Howshar, has turned in her resignation. He shared the reasons Ms. Howshar has vacated her employment with the Office of Bar Counsel and wished her well.

Mr. Gifford reported that the Wyoming Attorney General has filed two petitions relating to matters in which his office has been involved. He provided details about both petitions and answered Board members' questions. He also shared that just this morning, the Cheyenne City Attorney filed a petition with the First Judicial District Court asking the court to direct the Attorney General's Office to investigate and potentially prosecute a case that the Laramie County District Attorney declined to investigate. There was considerable discussion surrounding the Laramie County District Attorney and her formal charge.

Fee Arbitration

Mark Gifford shared that with Shannon Howshar's departure, Executive Director Wilkinson met with Ms. Howshar and Marie Ellis, CLE Director, to transition the Fee Arbitration Program to Ms. Ellis.

Client Protection Fund

Mark Gifford reported that the Client Protection Fund continues to be the beneficiary of those deceased members who leave money in their trust accounts, but nobody knows who the money belongs to. Mr. Gifford reminded the Board that when a well-known attorney

committed suicide in 2015, Judge Bluemel ordered the money in his trust account to be paid to the Client Protection Fund on the theory that if any of the lawyer's clients came looking for their money, it would be available through the fund. This was the impetus for a change to WRPC 1.15 which makes the fund the repository for all unclaimed trust account funds. Mr. Gifford shared that it has been a good source of funding and it is a win-win for the Bar and the public.

Mark Gifford shared that Buffalo lawyer Greg Goddard passed away earlier this week. He has been contacted by lawyers asking who has stepped in to wind up Mr. Goddard's practice. Mr. Gifford shared that he reached out to a fellow Buffalo attorney, Barry Crago, and he is happy to assist with this.

Commissioner Gee shared a concern that the disciplinary case against the Laramie County District Attorney has resulted in some undeserved negativity towards the Office of Bar Counsel and wondered if there was anything the Board could do to help educate people about the process. Mark Gifford shared that he appreciated that, but from his perspective, his office is simply doing its job. He reminded the Board that he received a letter signed by all seven judges in the judicial district and based on that and several other factors, it was not a hard call to open an investigation.

Approval of 2021-2023 Strategic Plan

Executive Director Wilkinson shared the Strategic Plan that came as a result of the June planning session outside of Cody and asked the Board if it wished to alter anything in the written plan.

Commissioner James Whiting made a motion to approve the 2021-2023 Strategic Plan. Commissioner Thybo seconded the motion. The motion carried unanimously.

Member Benefit Review

Executive Director Wilkinson distributed her annual review of member benefits in which the Bar enters into a contract with the provider. Commissioner Gee asked how many of the member benefit contracts require the Bar to market the benefit through broadcast e-mails to the membership. Executive Director Wilkinson shared that she did not know the exact number off the top of her head, but she knew of a handful of them with that requirement—MyCase being one example. Commissioner Gee shared that she is concerned with those types of e-mails coming from the Bar, as members will simply delete those and potentially not pay attention to other more important notices from the Bar.

After discussion, Executive Director Wilkinson offered to gather some information pertaining to how many of the members are taking advantage of the free CLEs being offered by MyCase and other providers. It was recommended to bring this information back to the Board at its November meeting.

2021/2022 Proposed Budget

Executive Director Wilkinson walked the board through the budget that she, Cathy Duncil, Bookkeeper; and Jim Edwards, Treasurer; are proposing for the 2021/2022 fiscal year and recommended a few adjustments. She made mention that no changes had been made to any of the payroll projections, as that is for the Board to decide.

Vice President Kath made a motion to convene an Executive Session. Commissioner Gee seconded the motion. The motion carried unanimously. An Executive Session was convened at 2:44 p.m.

Commissioner Gee made a motion to adjourn the Executive Session. Vice President Kath seconded the motion. The motion carried unanimously. The Executive Session was adjourned at 4:10 p.m.

New Member Benefit Proposal – Documate

Executive Director Wilkinson shared that she learned of Documate from Jared Correia, founder and CEO of Red Cave Law Firm Consulting. Documate is a no-code platform for creating automated workflows. Executive Director Wilkinson originally shared it with Past President Weston Graham and asked for his review. Weston Graham joined the meeting and provided an overview of Documate. He shared that document automation has been around for a long time; however, Documate is the first one tailored specifically to lawyers and was created by lawyers. He shared that one of the benefits of Documate is a lawyer does not have to have an IT background or have any knowledge of coding in order to generate the forms.

Past President Graham felt that if law firms are not spending time on automating some processes, they are not operating as efficiently as they could be. He shared that he and Mark Gifford, who also reviewed Documate, agree on the importance of lawyers actually reading these documents to ensure everything is in order; however, the document automation should still produce documents much quicker.

Past President Graham shared that Documate has many online tutorials to walk users through the processes and also has exceptional customer service and support even if lawyers are working late at night. He also shared that Documate integrates well with other Wyoming State Bar member benefits—in particular, Clio.

Past President Graham discussed the different price points of the product and shared that they range from very basic to a customized version. He felt that the standard or “light” version would be sufficient for most lawyers and could potentially fill some staffing voids that lawyers may be experiencing. He shared that even if the Board does not approve this as a member benefit, he will still contemplate purchasing Documate for his firm.

Executive Director Wilkinson shared that the bar could potentially generate some revenue from this member benefit or we could pass larger savings onto the members and generate no revenue. She indicated that the decision was up to the Board.

Commissioner Whiting made a motion to offer Documate as a member benefit and pass along the largest possible discount to the members without the Bar generating any revenue. Commissioner Jennifer Kirk seconded the motion. The motion carried unanimously.

Proposed Budget/Salary Adjustments

Commissioner Sarah Chavez made a motion to convene an Executive Session. Commissioner Gee seconded the motion. The motion carried unanimously. An Executive Session was convened at 4:29 p.m.

Commissioner Gee made a motion to adjourn the Executive Session. Commissioner Whiting seconded the motion. The motion carried unanimously. The Executive Session was adjourned at 4:45 p.m.

Commissioner Kirk made a motion to approve all salary adjustments that were discussed and agreed upon in Executive Session. Vice President Kath seconded the motion. The motion carried unanimously.

Vice President Kath made a motion to approve Mark Gifford's request to waive the provision in the Employee Handbook that, "No cash payment in lieu of health insurance will be provided to any employee," drop him from the Bar's group health insurance coverage when he becomes Medicare-eligible and have the Bar reimburse him for the cost of his Medicare supplement coverage. Commissioner Stefanie Boster seconded the motion. The motion carried unanimously.

Equal Justice Wyoming Foundation (EJWF) Proposal

Executive Director Wilkinson circulated a proposal submitted by Leah Schwartz, EJWF President, and Angie Dorsch, EJWF Executive Director, requesting that the Board consider another match challenge in support of EJWF's continued fundraising efforts.

President Addleman reminded the Board that EJWF had approached the Board last year with a different request to help increase revenue for the Foundation. The Board denied that request but offered to match \$25,000 if EJWF could raise that same amount. President Addleman shared that he spoke with Ms. Schwartz and Ms. Dorsch and encouraged them to put forth a similar proposal for next fiscal year and reminded the Board that this matching grant was factored into the proposed budget for the next fiscal year.

Commissioner Gee indicated that she would like to challenge EJWF to match every dollar raised with \$2.00. Commissioner Thybo shared that she likes the \$25,000 matching grant idea because it is significant but not over the top. Past President Kelly Neville shared that she preferred the dollar-for-dollar match.

After discussion, Commissioner Gee made a motion to allocate \$25,000 but give the Executive Committee discretion to design the match. Commissioner Whiting seconded the motion.

Commissioner Shawn Wilde shared that he is satisfied with the Executive Committee making the final decision, but he cautioned that we may be making this organization dependent on the Bar. Executive Director Wilkinson reminded the Board that the Bar also funds EJW and EJWF in other ways—namely, the line item on the license fee statement and a portion of each pro hac vice application fee.

Commissioner Wilde asked Mark Gifford if funding these types of organizations could get us into any problems with the Bar's Keller policy. Mr. Gifford indicated that he did not think so, as EJWF is involved in access to justice activities that fall squarely within the Bar's core functions.

Mark Gifford reminded the Board that this was President Addleman's vision last year and as a result of that, the Foundation has gone from an organization that did absolutely no fundraising to one where they have found much success. He shared that these fundraisers are also getting the Foundation more exposure.

The motion carried unanimously.

Proposed Amendments to Uniform Section Bylaws

Executive Director Wilkinson shared that there is a necessary change to the Uniform Section Bylaws, as the Board is no longer requiring section councils to submit budget requests to the Board each year. That was a requirements spelled out in the Bylaws, so Executive Director Wilkinson asked the Board to remove that clause.

Executive Director Wilkinson also shared that Devon O'Connell, Past Bar President and Past President of the Children & Family Law Section Council, has requested that the Board amend the Uniform Section Bylaws so that all council terms are two years instead of one. Executive Director Wilkinson reminded the Board that these are uniform bylaws, so any amendments impacted all 11 practice sections. She shared that she does not support Ms. O'Connell's recommendation, as she feels this would make it even harder to recruit leaders for each section council if it was a two-year commitment. She also shared that she had not discussed this proposed amendment with any other section council.

Commissioner Gee made a motion to approve the proposed amendments with the exception of increasing the council members' terms to two years; however, she wished to remove the council members' term limits. Commissioner Thybo seconded the motion. The motion carried unanimously.

Proposed Amendments to Bylaws of the Wyoming State Bar

Mark Gifford reminded the Board that in early July, he became aware of two cases out of the Fifth Circuit Court of Appeals that collectively signaled that mandatory bars are really going to be more closely scrutinized by federal courts. He shared that in reading these cases, he recognized that they highlight that the Wyoming State Bar's objection and refund procedures may not be adequate. Mr. Gifford shared that the immediate ask is to redo our refund/objection procedure so that members have an opportunity to object in advance of their

money being spent on things with which they disagree. He walked the Board through the proposed policy. He also shared that another proposed amendment is to allow out-of-state members to vote in the Bar's elections.

Mr. Gifford directed the Board's attention to the comments he received as a result of Executive Director Wilkinson putting the proposed amendments out for member comment in July. He shared that only six members commented. Mr. Gifford also shared that he has been in communication with Chief Justice Fox about possibly fast-tracking these bylaw amendments so they can be in effect before the upcoming license fee cycle.

Commissioner Gee made a motion to approve the proposed amendments to the Bylaws of the Wyoming State Bar and advance those to the Supreme Court for adoption. Commissioner Boster seconded the motion. Commission Thybo asked Mr. Gifford if any of the comments received raised any concerns for him. He indicated that they did not.

The motion carried unanimously.

Attorney Pledge

Executive Director Wilkinson shared that she was approached by Justice Boomgaarden about the Court adopting a formal pledge in addition to the oath that new attorneys are required to take. She shared that it was her understanding that this issue arose with the Board of Judicial Policy and Administration (BJPA), but the members of that Board wished to seek the Bar's input. The pledge that was originally shared with Executive Director Wilkinson was from North Dakota. She shared that it was her understanding that while the sentiment of the pledge was included in the Preamble to the Rules of Professional Conduct, members of the BJPA had concerns as to how many lawyers actually read the Preamble. Executive Director Wilkinson reported that she shared the North Dakota pledge with members of the Board of Professional Responsibility, the Review and Oversight Committee, the Board of Law Examiners and the Character and Fitness Committee. Mark Gifford shared that he was included in those communications, but he was not fond of the tenor of North Dakota's pledge. As a result, he redrafted the pledge that was included in today's meeting materials to more closely match the language in Wyoming's Rules of Professional Conduct.

Executive Director Wilkinson shared that all members of the regulatory boards mentioned above signed off on the amended pledge and she immediately submitted it to the Court for consideration. She reported that she has not heard anything back from the Court.

President Addleman shared that he felt strongly that if the Court is going to make the reading and possibly signing of this pledge a requirement of admission, then the Board members should also take the pledge.

Mark Gifford shared that what he likes about signing the pledge is he is seeing a pattern of lawyers starting to abuse these principles. He felt it would be beneficial to his office if they could refer to these signed pledges as an effective tool to head off potential discipline.

Commissioner Kirk shared that on some level, signing such a pledge would make her feel childish as if she had to be told these things.

President Addleman shared that even if the Court does not implement this, he is going to sign one himself.

Vice President Kath shared that if young lawyers do not already subscribe to the sentiments in the pledge due to their training, they should be embarrassed. He felt that every lawyer should know that this is his/her responsibility.

Mark Gifford reminded the Board that the Court is not asking for the Board's permission, but he really appreciates the Court asking for the Bar's input.

2021/2022 Board Meeting Schedule

Executive Director Wilkinson walked the Board through the proposed months and locations of upcoming Board meetings for the 2021/2022 fiscal year. During discussion, dates were chosen for each month's meeting.

President's Report

President Addleman reported that things are wrapping up with the Court Records Committee on which he serves, and that the e-Filing Committee is moving towards coordinating with the vendor to put a pilot project in place in Albany County.

President Addleman reported that he, President-Elect Barbe, Commission Chavez, Executive Director Wilkinson, Bar Counsel Mark Gifford and Brandi Robinson met with the members of the Diversity, Equity & Inclusion Section Council in Casper on July 9th to provide an overview of the Keller policy to that group. President Addleman shared that it was a very productive meeting and Mark Gifford was able to provide some pertinent information that resulted in a better understanding of the challenges this section's activities present in regard to the Bar's Kelly policy. President Addleman also shared that there was discussion of this section starting its own stand-alone organization.

President-Elect's Report

President-Elect Ken Barbe shared that he is continuing his work on the Judicial Poll Subcommittee along with Executive Director Wilkinson and others. He reminded the Board that members of the judiciary reached out to the Bar in hopes of possibly improving the Judicial Poll. President-Elect Barbe reminded the Board that President Addleman put together a committee made up of lawyers, judges and non-lawyers to tackle this project. He reported that the group is basically changing the questions asked as well as the potential responses and looking seriously at adopting Colorado's questions. He shared that it has been a great project to work on.

Executive Director's Report

Executive Director Wilkinson reported that with the rising COVID numbers, she is once again considering closing the office to the public. She reported that there is an attorney who has

two days of depositions next week. She will definitely allow that to take place but will require masks in all common areas for those two days.

Executive Director Wilkinson shared that she is seeing a lot of discussion on her Executive Directors' listserv about how other bars are handling in-person meetings—vaccine requirements, mask requirements, social distancing requirements, all-virtual, etc. She wondered if the Board had any direction for her in regard to next month's Annual Meeting & Judicial Conference. She reported that there were approximately 150 in-person registrants and 88 virtual registrants, but she did expect those numbers to increase as September rolled around. After discussion, all agreed to move forward with the hybrid conference as originally planned.

Young Lawyers Section Report

Ben Rose, Chair of the Young Lawyer Section, shared that the section finalized its CLE for next month's Annual Meeting. He shared that they have put together a great panel on ADR/mediation.

Mr. Rose reported that Maddie Lewis, Council member, has reached out to the law school to plan an event for September that is focused on suicide prevention. He also reported that Nick Dillinger, Council member, is working with the law school on the Dress for Success program.

Mr. Rose shared that Joel Defebaugh, Council member, ran a series of "lunch with a judge" programs, but the turn-out has really been dwindling. As a result, Mr. Defebaugh plans to survey the section members to see what they want regarding CLE programs.

Ben Rose shared that he has been in contact with Jared Correia of Red Cave Law Firm Consulting about doing a "nuts and bolts" series for the Young Lawyer Section. He was hoping to get something scheduled before Annual Meeting so they could plug the one-on-one consulting sessions during the series.

Overall, Mr. Rose reported that the section is functioning well, and he has really enjoyed his time serving as an ex-officio member of the Board of Officers & Commissioners. He knows that Emily Madden, incoming Chair, is going to be a great addition.

President Addleman thanked Mr. Rose for his investment in the section and thanked him for his impressive leadership this past year.

Commissioner Reports

President Addleman asked if any commissioner had anything to report from his or her judicial district.

Commissioner Wilde reported that the Eighth Judicial District had its annual meeting and summer gathering in Torrington a few weeks ago and they had a great turn-out. He reported that there was golf, skeet shooting, a brief meeting and dinner afterwards.

Commissioner Gee shared that she is concerned about the statutes that were recently passed regarding notaries. She feels that the changes are substantial, and she is not confident lawyers are aware of them. She wondered if the Bar could perhaps consider doing some education on this.

President Billie LM Addleman adjourned the meeting at 6:05 p.m. on Friday, August 20, 2021.

Minutes Submitted by:

Sharon Wilkinson
Executive Director